G. R. S. App. F. IX-4]

1942-

File No. 140-42

Previous References.

Serial No. 1

(Pre)

PRESERVED

Later References.

GEN. & REV. SECRETARIAT

Serial Nos. are

Part B for February 1943

SUBJECT.

Memorandum of the Government of India dated 21-12-1942 regarding Submission of Petty Services of Condemned Prisoners.

2-2-44

PRISONS 5749

Continuation Sheet. From File No. / Current No. 140 of 42 Page.

Rendezvous Endt No R.F. 518-40/Judl. dated 17th Feby 1943 addressed to the Supdt Central Jail, Bangalore forwarding duplicate copies of the Secret Memorandum of the Govt of India dated 21st Dec 1942 regarding Submission of mercy petition of Condemned prisoners.

—11—

Submitted one copy may be sent to the Supdt Central Jail, Bangalore to whom the Convict is forwarded by the Rendezvous

Memo is submitted for kind signature on the Convict.

19/2/43

Issued No. P 5830/Secl dt 19.2.43

WD 1140—GPB—50,000—5-11-42

5749 CONFIDENTIAL.

THE OFFICE OF THE HON'BLE THE RESIDENT IN MYSORE.
Bangalore, 17 Feby. 1943.

No.R.F.518-40/Judl.

A copy of the undermentioned papers is forwarded to the

Superintendent, Central Jail, Bangalore.
(through the Chief Secretary to the Government of His Highness the Maharaja of Mysore.)

for information and guidance, in continuation of endorsement from this Residency No.R.F.518-40/Judl., dated the 21st October 1942.

By order, etc.,

SECRETARY TO THE RESIDENT.

1. Memorandum from the Defence Department, Government of India No.1480-GM/42, dated the 21st December 1942.
2. Letter from the Secretary to the Governor General (Public) to all Provincial Governments, No.59/42-G.G.(B), dated the 16th January 1943.

18 FEB 1943

Copy of secret memorandum No.1430-SM/42, dated New Delhi, the 21st December 1942, from the Government of India, Defence Department, to all Chief Secretaries (except Bombay and the Punjab), etc., etc.

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Execution of death sentences passed by Special Criminal Courts.

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Please refer to section 2 of the India and Burma (Temporary Miscellaneous Provisions) Act, 1942 published in the Gazette of India on the 5th December 1942, at pages 1785 to 1787 of Part I - Section I

2. The Government of India have received enquiries, no doubt instituted before copies of the Act became available, as to whether the section barred appeals to the Privy Council against sentences of death imposed by Courts set up under the Special Criminal Courts Ordinance 1942. It will be seen that the provisions of section 2 of the Act do not become operative until a declaratory Ordinance has been promulgated under sub-section (2). The Special Criminal Courts Ordinance provides for the review and confirmation of sentences by a person holding office as a judge of a High Court, and Courts set up under it are susceptible of being declared to be "emergency courts"; but in the absence of a declaratory Ordinance, which is the position at present, appeals will lie to the Privy Council in the Ordinary way. The question of promulgation of a declaratory Ordinance at the present juncture has been considered, but it is thought that, while it cannot be said that the emergency to meet which the Special Criminal Courts Ordinance was in many Provinces applied is altogether at an end, the deprivation of the right to appeal in relation to offences committed several months ago would be difficult to justify.

No.59/42-G.G.(B).
SECRETARIAT OF THE
GOVERNOR GENERAL (PUBLIC).

From

Sir John Thorne, K.C.IE., C.S.I., I.C.S.,
Secretary to the Governor General (Public).

To

All Provincial Governments.

New Delhi, the 16th January 1943.

Subject:- Procedure to be observed by Provincial Governments for the submission of petitions for mercy from or on behalf of convicts sentenced to death by Courts constituted under the Special Criminal Courts Ordinance, 1942.

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Sir,

I am directed to request that, in order to reduce as far as possible the interval between the confirmation of sentence and execution of a convict sentenced to death by a Court constituted under the Special Criminal Courts Ordinance 1942, the following modifications in the existing Instructions relating to petitions for mercy should be observed in such cases only with immediate effect. It is hoped by these means to reduce the interval to a period of from two to three weeks.

2. (a) In Instruction I, the period allowed to a convict for the preparation and submission of a petition for mercy shall be reduced from seven days to two days, exclusive of the date on which the Superintendent of the Jail has informed him of the confirmation of the sentence of death passed on him.

(b) In the concluding sentence of Instruction IV, it is stated that in cases 'of a political character' petitions submitted after the prescribed period shall be forwarded to the Secretary to the Governor General (Public); most of the cases now being tried in courts constituted under the Special Criminal Courts Ordinance arise out of the Congress disturbances this fact by itself should not be considered sufficient reason to require

require that the Governor General should have an opportunityof considering such petitions.

(c) As regards Instruction VII, all communications sent to and by all Provincial Governments shall be by telegram, except that the petitions for mercy, along with the records of the case, shall be forwarded to the Secretary to the Governor General (Public) by express letter.

(d) If any petition for mercy is submitted directly to the Governor General, its contents will be repeated by telegram to the Provincial Government by the Secretary, to the Governor General (Public). The Provincial Government will then treat it as a petition addressed to themselves and the Governor General and dispose of it in accordance with the Instructions as modified.

(e) All communications relating to sentences passed by Courts constituted under the Special Criminal Courts Ordinance should be addressed to the Under Secretary to the Governor General (Public), New Delhi. (But all communications relating to other death sentence shall continue to be addressed to the Under Secretary to the Governor General (Public, Simla as requested in this office letter No. 25/20/41-G.G.(A), dated the 7th April 1942).

3. I am further to request that arrangements should be made that as soon as a Judge nominated under section 8 of the Ordinance confirms a sentence of death, the records of the case shall be transmitted to the Provincial Governmwnt with the utmost despatch.

4. A consequential modification in the Instructions relating to the duties of Superintendents of Jails in these cases is that in the last line of the instruction I and the first line of Instruction II the period of seven days will be reduced to two days.

5. In conclusion, I am to add that, as will appear from Defence Department's letter No.1480-SM/42, dated the 21st December 1942 the procedure for dealing with applications for special leave to appeal to the Judicial Committee of the Privy Council is unaffected unless and until courts constituted under the Special Criminal Courts Ordinance are declared to be "Emergency Courts"

I have the honour to be,
Sir,
Your most obedient servant,

Sd. J.A. Thorne,
Secretary to the Governor General (Public)